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RECENT IMPORTANT DECISIONS

ANIMALS—KNOWLEDGE OF VICIOUS PROPENSITY—OWNER NOT LIABLE FOR DOG UPSETTING FORD.—The defendant's dog had been in the habit of following and barking at automobiles, and this fact was known to the defendant. The plaintiff was riding with her husband in a Ford car, when suddenly the defendant's dog jumped in front of them. By running over the dog, the car was thrown against an embankment and the plaintiff was injured. *Held*, that the plaintiff was not entitled to recover, there being no evidence of a vicious propensity in the dog. *Melicker v. Sedlacek* (Iowa, 1920), 179 N. W. 197.

In general, the owner is not liable for injury inflicted by his domestic animal unless he can be charged with knowledge of a vicious propensity which contributed to the injury. *Mason v. Keeling*, 1 Ld. Raym. 606; *Fritsche v. Clemow*, 109 Ill. Ap. 335. A dog will not make its master liable by knocking a person down, where it is not shown that the dog had a propensity for so doing. *Forsythe v. Kluckhohn*, 150 Iowa, 126. Likewise, the owner of a turkey is not liable for its frightening a horse. *Zumstein v. Schrumm*, 22 Ont. App. Rep. 263. Nor is the owner liable for his dog jumping over a fence and landing on the neck of the plaintiff, for the same reason. *Sanders v. Teape*, 51 L. T. N. S. 263. Neither is there any liability resulting from a chicken flying into the spokes of a bicycle and upsetting the rider. *Hadwell v. Righton* [1907], 2 K. B. 345. Nor from a sow frightening a horse so that the driver of an automobile coming from the opposite direction had to drive into a stone wall in order to avoid hitting the horse. *Higgins v. Searle*, 25 T. L. R. 301. Undoubtedly, the principal case was correctly decided, for there was no evidence that the defendant's dog had a vicious propensity for jumping under Fords and causing them to leave the road, to the discomfort of their occupants.

COMMERCE—OIL INSPECTION LAW WITH FEES LARGELY EXCEEDING COST INVALID AS TO INTERSTATE COMMERCE.—An oil inspection statute in the state of Georgia was attacked on the ground that for a number of years the amount of the fees fixed by the law had proved to be largely in excess of the actual cost of the inspection. *Held*, that the statute was unconstitutional and void as to interstate commerce. *Texas Co. v. Brown* (D. C., N. D., Georgia, 1920), 266 Fed. 577.

In the exercise of its police power a state may enact inspection laws which are valid if they tend in a direct and substantial manner to promote the public safety and welfare, or to protect the public from fraud and imposition when dealing in articles of general use, as to which Congress has not made any conflicting regulation, and a fee reasonably sufficient to pay the cost of such inspection may constitutionally be charged, even though the

property may be moving in interstate commerce when inspected. *Pure Oil Co. v. Minnesota*, 248 U. S. 158; *Patapsco Guano Co. v. North Carolina Board of Agriculture*, 191 U. S. 345; *McLean & Co. v. Rio Grande R. R. Co.*, 203 U. S. 38; *Asbell v. Kansas*, 209 U. S. 251. But when such inspection charge is obviously and largely in excess of the cost of inspection the act will be declared void as constituting in its operation an obstruction to and a burden upon that commerce among the states, the exclusive regulation of which is committed to Congress by the Constitution. *Footte & Co. v. Maryland*, 232 U. S. 494; *Pure Oil Co. v. Minn.*, *supra*. The court in passing upon a law of this sort is confronted with the difficulty of determining whether the measure in question is a bona fide inspection law or a veiled revenue measure. Obviously, laws of the latter type may be divided into two classes. In the one are those laws whose invalidity necessarily appears at first glance, as where it is provided that a certain percentage of the proceeds is to be turned over to the state treasurer as part of the general fund, or that the expense incurred in carrying out the provisions of the act is to be paid out of a limited portion of the total receipts only and no further provision is made from the general fund. See *Caldwell v. State*, 119 N. E. 999; and *Wofford Oil Co. v. Smith*, 263 Fed. 396. This situation presents no difficulty and the court can say immediately that the act is unconstitutional and enjoin its execution. Where, as in the principal case, however, the law is valid upon its face, subject only to the objection that the amount to be collected will prove excessive, the situation is somewhat different. It seems to be well settled that the court will not declare a statute of this type invalid in the first instance, since to do so would be to hold the legislature guilty of bad faith, and the presumption is that if the fees prove excessive in practice the legislature will reduce them. *Red "C" Oil Mfg. Co. v. Board of Agriculture*, 222 U. S. 393. When the facts clearly show, however, that the excessive charge has been continued over a period of years, the court is forced to conclude that the act was intended as a revenue measure, under the guise of an inspection law, and to declare it void accordingly. *Footte & Co. v. Maryland*, *supra*; *Standard Oil Co. v. Graves*, 249 U. S. 389; *Castle v. Mason*, 91 Ohio St. 266. A more striking situation results when the act also provides for non-inspection duties and evidently contemplates that the added expense will be borne by inspection fees. Upon its face a law of this sort is within the first class, but at least in cases where there is a provision for appropriation from the general fund, in case the amount derived from the fees proves insufficient for the total expense, the court will place it in the second class and refuse to declare it void in the first instance, on the ground that inasmuch as there is a possibility that experience may show that the proceeds are insufficient for both purposes, and since the presumption is that the fees will be used lawfully if it is in any way possible, the act may prove valid in practice. *Footte & Co. v. Maryland*, *supra*; *American Coal Mining Co. v. The Special Coal and Food Commission of Indiana et al.* (D. C., Dist. of Indiana, Sept. 6, 1920), — Fed. —.